

C O P Y

263A

NEW HAMPSHIRE LAW LIBRARY

SEP 03 1998

CONCORD, N.H.

1951

Mar. 2

Mr. James J. Barry, Commissioner
Department of Public Welfare
State House Annex

Dear Sir:

Reference is made to your letter of February 26, 1951 regarding the power of your department to be paid for the maintenance of children in foster homes.

An examination of the statutes discloses no power in your department directly to fix rates which shall be paid by the counties and towns for the maintenance of dependent children.

While your department has wide powers in the administration of child welfare services (R. L. c. 126, s. 6 II), responsibility for the support of the children lies with the counties and towns. This liability is imposed by R. L. c. 127, s. 10, which requires the expense of maintenance to be borne by the liable county or town. This section also contains the proviso: "that such expense shall be first approved by the county commissioners or overseers of the poor . . .". The effect of this proviso is to permit the counties and towns, in the final analysis, to determine the rates which they shall pay for services they receive.

You do, however, have the power to require that children under your supervision be maintained in accordance with your standards. Such power arises under R. L. c. 126, s. 6 II, and R. L. c. 130 as inserted by Laws of 1949, c. 243. If the subdivision can procure facilities meeting these standards at a low price, that is, of course, to their advantage. If they fail to provide such homes, or if they refuse to pay the reasonable charges made by homes meeting your standards, an action would lie against the county commissioners or overseers of the poor to compel compliance with their statutory duty to meet the expenses of the children for whom they are liable.

Very truly yours,

Warren E. Waters
Assistant Attorney General

WEW:rm